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Rejection of Claim 5

In regard to the 112 rejection of claim 5 regarding the phrase "wherein the DNA does not comprise the sequence of SEQ ID NO 4"

The Office action contends that the claims is indefinite, because the specification discloses that the DNA of SEQ ID NO:4 encodes the protein of SEQ ID NO:5 and thus the limitation that DNA does not comprise SEQ ID NO 4 is in conflict with the recitation in clause c that it does

Response: It is true that the DNA of SEQ ID NO:4 does encodes the protein of SEQ ID NO:5. However this is not the only polynucleotide sequence that does. Because the genetic code is redundant other nucleotides, besides the exact sequence of SEQ ID NO:4 can encode for the protein of SEQ ID NO:5.. This is due to the fact that most of the amino acids are encoded by more than one codon.

Also the specification provides specific support for the DNA other than SEQ ID NO: 4 which encodes a protein of SEQ ID NO: 5 at page 16, lines 17-21 where it states that

"A DNA having any nucleotide sequence based on the degeneracy of genetic code may be included so long as it encodes the amino acids described in SEQ ID NOs: 5 to 8, 10, 12, 13, 21 to 24, 26 to 29, 32, 33, 37 to 40, 46, 48, 54, or 60."

Therefore the DNA encoding the protein of SEQ ID NO:5 is not limited to SEQ ID NO:4 and so the claim 5 is definite.